

Hoang (Migration) [2019] AATA 3259 (2 April 2019)

DECISION RECORD

DIVISION:	Migration & Refugee Division
REVIEW APPLICANT:	Mr Dinh Tai Hoang
VISA APPLICANTS:	Ms Meie Huang Miss Wenyuan Wen Mr Zhenyi Wen
CASE NUMBER:	1611584
DIBP REFERENCE(S):	BCC2015/2579082
MEMBERS:	M. Edgoose (Presiding) Moir Brophy
DATE:	2 April 2019
PLACE OF DECISION:	Melbourne, Victoria
DECISION:	The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

Statement made on 02 April 2019 at 10:00am

Statement made on 02 April 2019 at 10:06am

1. **CATCHWORDS**
2. *MIGRATION – Partner (Provisional) (Class UF) – Subclass 309 (Spouse (Provisional) – genuine spousal relationship – inconsistent evidence – decision under review affirmed*
- 3.
4. **LEGISLATION**
Migration Act 1958 (Cth), ss 5F, 65
Migration Regulations 1994 (Cth), Schedule 2 cls 309.211, 309.221, 309.311, r 1.15A(3)

CASES
He v MIBP [2017] FCAFC 206

STATEMENT OF DECISION AND REASONS

5. **ISSUE**

6. The issue in the present case is whether the visa and review applicants were in a genuine spousal relationship at the time of application and continue to be in a genuine spousal relationship at the time of this decision.

APPLICATION FOR REVIEW

7. This is an application for review of a decision made by a delegate of the Minister for Immigration on 25 July 2016 to refuse to grant the visa applicants Partner (Provisional) (Class UF) visas under s.65 of the *Migration Act 1958* (the Act).
8. The first named visa applicant (the visa applicant) applied for the visa on 4 September 2015 on the basis of their relationship with their review applicant, the review applicant. At that time, Class UF contained only one subclass: Subclass 309 (Partner (Provisional)). The criteria for the grant of this visa are set out in Part 309 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria. Relevantly to this matter the primary criteria include cl.309.211.
9. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.309. 211, cl.309.221 and cl.309.311 because the delegate was not satisfied that the relationship between the visa applicant and the review applicant met the definition of “spouse” provided in section 5F of the Act, taking into account all the circumstances of the relationship, including the matters set out in sub regulation 1.15A(3). The visa applicant does not meet the legal requirements of clause 309.211.
10. The review applicant appeared before the Tribunal on 25 September 2018 to give evidence and present arguments and this hearing was adjourned. The hearing resumed on 28 November 2018. The Tribunal also received oral evidence from Ms Meie Huang the visa applicant, Miss Wenyuan Wen the secondary visa applicant and daughter of the visa applicant, Xing-Siew Lai a friend of both the review applicant and the visa applicant and Calvin Hoang the son of the review applicant. The Tribunal hearing was conducted with the assistance of an accredited interpreter in the Cantonese and English languages.
11. The review applicant was represented in relation to the review by his registered migration agent. The representative attended both the Tribunal hearings.
12. For the following reasons, the Tribunal has concluded that the decision under review should be affirmed.

13. BACKGROUND

14. The visa applicant, Ms Meie Huang is a 48 year old female born in Vietnam. She was previously married to Jiring Wen in the period from 1996 to 2004. There were two children of the marriage, a daughter born in January 1998 and a son born in August 2001. They are named as secondary applicants in the present application. Ms Huang’s parents are deceased and she has three sisters and one brother living in China. Ms Huang arrived in Australia with her daughter on a student guardian visa on 26 August 2014. She returned to China on 24 August 2016.
15. The review applicant, Mr Dinh Tai Hoang, is a 58 year old male Australian citizen. He was previously married to A Quang Hin in the period from 1979 to 2009. There were three children of the marriage, a daughter born in November 1981, a son born in July 1983 and a son born in August 1986. Mr Hoang’s father was deceased and his mother and two brothers and two sisters are residing in the UK. He also has one sister in China.

16. At the time of application Mr Hoang was working as a dim sum chef in a Chinese restaurant in Melbourne.
17. At time of application the parties stated they met at a party in Melbourne in December 2014. They were introduced by a mutual friend named Xing-siew Lai. Xing-siew Lai studied in the same junior high school as the visa applicant and had been friends with the review applicant for more than 20 years. The review applicant pursued the relationship and they commenced a relationship in February 2015. The review applicant proposed to the applicant in March 2015 and the applicant accepted the proposal on 2 April 2015. They married on 14 May 2015 and the review applicant moved in with the applicant in her rented house on 20 April 2015. The parties jointly purchased an investment property in July 2015.
18. On 5 April 2016 the visa applicant, the review applicant and the visa applicant's ex-husband were interviewed by an officer of the Department.
19. On 14 June 2016 the review applicant and his ex-wife were interviewed by an officer of the Department.
20. The delegate who made the original decision noted both applicant and the review applicant provided vague and indirect responses to questions at the time of interview; they changed their answers and demonstrated limited knowledge of each other's personal circumstances. The delegate found the following inconsistencies:
 - The applicant said the review applicant had paid AUD\$1000 deposit to purchase another property but the review applicant said they had not decided to buy another property;
 - The applicant and review applicant gave inconsistent evidence as to how many housemates they have;
 - The review applicant said the applicant had met his work colleagues but the applicant said she has not;
 - Both parties claimed the applicant had met some of the review applicant's friends but the applicant was unable to recall any names, the review applicant was unable to provide contact numbers of those friends;
 - The applicant claimed the review applicant had never met or talked to her siblings, but the review applicant said he has talked to the applicant's sister via webcam;

The delegate found:

- The review applicant did not know the usage and balance of their joint account;
- The review applicant did not have basic knowledge of the applicant's daughter who is living in Australia with them;
- The applicant changed her evidence as to how many people in China knew about their relationship and she was unable to provide more details as to how her friends knew about the relationship;
- The review applicant could not provide details of the applicant's business status, business partners and which country the applicant's family reside, he also could not provide the full name of the applicant's daughter, where she goes to school, what grade she was in and the applicant's son's name and living arrangement;
- Both parties could not name each other's siblings;
- The delegate noted both parties maintain relationships with their previous partners. He especially noted that while the review applicant claims to have divorced his ex-wife in 2009, he travelled with her overseas in 2011 and 2014, he claims to have travelled with her and his son in 2014 for his son's wedding;

- The delegate noted the review applicant and his ex-wife visited England in March 2016 within a few days of each other. The review applicant's ex-wife said her trip was to visit the review applicant's brother and mother because she still loves them, whereas the review applicant claimed he had no idea why his ex-wife still visited his family. The review applicant also gave inconsistent and vague evidence as to why the applicant did not travel to UK to meet the review applicant's immediate family;
- The delegate noted that when the review applicant and his ex-wife travelled together in 2014 they declared the same residential address upon their return;
- The delegate noted the review applicant and his ex-wife gave inconsistent information regarding their last contact;
- The delegate noted that it appeared from the mobile phone records of the applicant that she was still in regular contact with her ex-husband.

21. Prior to hearing the following documents were provided to the Tribunal:

- Roy Hoang's (son of review applicant) statutory declaration dated 17 July 2015;
- Xing-siew Lai's statutory declaration dated 5 August 2015 and 22 August 2016;
- Visa applicant's statutory declaration dated 22 August 2016;
- Thi Nhan Nguyen (tenant) statutory declaration dated 15 August 2016;
- Thi Mai Ho, friend of the visa applicant statutory declaration dated 23 August 2016;
- The Tai Hoang, friend of the review applicant statutory declaration dated 26 August 2016;
- Michael William Vincent (landlord) statutory declaration dated 14 August 2016;
- Calvin Cuong Hoang, son of the review applicant statutory declaration dated 14 August 2016.
- Roy Hoang, son of the review applicant statutory declaration dated 17 July 2015.

22. **Tribunal Proceedings**

23. At hearing the Tribunal took oral evidence from the following witnesses.

24. **Witness – Mr Calvin Hoang – the son of the review applicant**

25. Mr Calvin Hoang informed the Tribunal that he lives in Epping and runs his own business as a financial consultant and mortgage broker. He has a de facto partner and two children aged two and four.
26. The witness stated to the Tribunal that he strongly feels the Tribunal should support the visa application of his father and stepmother. He believes that his father, the review applicant, has found the right partner.
27. The witness informed the Tribunal that his father had met his present partner at a family get together in Australia and that he talks to his father via telephone and face-to-face every three weeks. The witness stated that he did not attend the wedding of his father and the visa applicant because he was in Adelaide on business.

28. The witness stated that he had met the visa applicant on 6 to 8 occasions during her time in Australia but had had no contact with the visa applicant since she left Australia. The witness stated that his father is always on the phone to her.
29. The witness stated that he had never visited them at the Deer Park home and that he had only met the visa applicant's daughter on 5 to 6 occasions. The witness stated that he had not seen the visa applicant's daughter, Miss Wenyuan Wen, since the visa applicant returned to China in August 2016 except on 25 September 2018 at the Tribunal hearing. The witness stated that due to their age difference they have little in common and that they have a semi stepbrother stepsister relationship.
30. The witness stated that he was last at the Deer Park home four months ago but had seen his father the primary review applicant 3 to 4 weeks ago when his father visited his Epping home to see the grandchildren.
31. The witness stated that he has had no involvement in the financial affairs of his father although he did advise his father and the visa applicant at the time of purchase of the Deer Park property but was not involved in the overall process.
32. The witness stated that his father and ex-wife see each other at family gatherings every 4 to 5 weeks and that they both get along especially with the grandchildren. The visa applicant stated that he is close to his own sister but not with his brother. The witnesses closing comment was that he believes it is a genuine relationship and that they, being the visa applicant and the primary review applicant, want to spend the rest of their lives together.
33. The Tribunal accepts the witness talks with his father on a monthly basis however given his evidence of his limited contact with his father and present partner when she was in Australia the Tribunal finds the witness provided little insightful evidence about the genuineness of the relationship between his father and the visa applicant.

34. Witness – Miss Wenyuan Wen – the daughter of the visa applicant

35. Miss Wen arrived in Australia with her mother the visa applicant in August 2014 on a student visa and her mother, the visa applicant, accompanied her on a guardian visa. Miss Wen attended South Oakleigh College for a period of two years to complete her VCE. Miss Wen finished the VCE but did not attain an ATAR score.
36. Miss Wen told the Tribunal that she currently lives in Box Hill with two friends from her course.
37. Before living in Box Hill the witness had lived at the property owned by her mother and the review applicant in Deer Park and she used to pay the utility bills for the property. The witness stated that the electricity bill was in the name of the review applicant. Miss Wen stated that she used to deposit the cheques from the review applicant's work into the joint bank account of the review applicant and the visa applicant. Miss Wen stated that she used to take AUD \$300 per month from the account to cover her living expenses and when required, her mother, the visa applicant, would send money from China.
38. When questioned by the Tribunal Miss Wen stated that her mother had sent AUD\$2500 on 2 March 2017 and AUD\$5000 on 2 May 2017. Miss Wen also thought that the visa applicant, her mother had set more money since this time. The Tribunal was concerned that the applicant quickly provided the above dates to the Tribunal without being prompted.
39. Miss Wen stated that she is currently studying a three year Diploma of Business through Deakin University at a cost of AUD \$40,000 per year and that she attends the course 16

hours a week and still has two years to go. Miss Wen stated that her mother works back in China selling furniture and fruits.

40. Miss Wen stated that before studying the Diploma of Business she had studied a Certificate III in Commercial Cookery but she did not complete the course.
41. Miss Wen also stated that her mother, the visa applicant has sent money to her personal account.
42. Miss Wen stated that she had moved out of the Deer Park home on two occasions to be closer to where she was studying in Box Hill. The first time was in 2017 and the second time was in October 2018. Miss Wen said she had visited China in February 2018 for two months and when she returned she stayed at the Deer Park property approximately five months.
43. Miss Wen stated that she does not see the review applicant's children, Susie, Calvin and Roy often and that the last time she saw Calvin was in 2016 or 17 for the first birthday of one of his children.
44. Miss Wen informed the Tribunal that during the time she lived with her mother and the review applicant they would take her fishing and that they would also cook her meals every night when they were together.
45. The Tribunal accepts the witness lived with both the review applicant and visa applicant for a period of 15 months before the witness' mother, the visa applicant, returned to China in August 2016. After that time the witness continued to live at the same address for various periods. The Tribunal was concerned the witness was not able to give evidence about the genuineness of the relationship between her mother and the review applicant although she had lived with the couple for a period of 15 months and then with the review applicant for a period of time.

46. Witness – Ms Xing-Siew Lai – the of both the Visa Applicant and the Primary Review Applicant

47. Ms Lai is a personal friend of both the visa applicant and the review applicant. Ms Lai has known the visa applicant since primary school as they came from the same village in China. Ms Lai has known the review applicant since she first arrived in Australia in 1991. Ms Lai told the Tribunal that the visa applicant and the review applicant met for the first time at a gathering at her house.
48. Ms Lai is a close friend of the review applicant's ex-wife and communicates with her every week on WeChat. Ms Lai stated to the Tribunal that they never talk about the current situation.
49. Ms Lai final comment to the Tribunal was that she has never supported either the visa applicant or the review applicant financially but sees them as a loving and genuine couple and wishes them all the very best.
50. The Tribunal places some weight on the evidence provided by Ms Lai as she has known both the visa applicant and the review applicant for a substantial period of time.

51. CONSIDERATION OF CLAIMS AND EVIDENCE

52. In making its findings, the Tribunal has considered documents contained in the Department and Tribunal files and oral evidence provided by the review applicant, the visa applicant and their witnesses at the hearing.

Whether the parties are in a spouse or de facto relationship

53. Clause 309.211(2) and 309.221 require that at the time the visa application was made, and at the time of this decision, the visa applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the visa applicant claims to be the spouse of the review applicant who is an Australian citizen.
54. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the visa applicant's and review applicant's household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

Are the parties validly married?

55. If the parties are validly married, they may meet the requirements of a spousal relationship. The applicant's provided a copy of a Certificate of Marriage issued by the Commonwealth of Australia dated 14 May 2015 (DIBP Folio 38). There is nothing to suggest the marriage is not valid. On the evidence, the Tribunal is satisfied the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

56. Are the other requirements for a spousal relationship met?

57. In forming an opinion whether they are in a spousal relationship, consideration must be given to all of the circumstances of the relationship. This includes evidence of the financial and social aspects of the relationship and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3) which is attached to this decision. Each of the specific matters contained in r.1.15A(3) are effectively questions which must be answered: *He v MIBP* [2017] FCAFC 206.
58. The Tribunal received documentation and oral evidence that was not available to the delegate. This information has been taken into consideration in the making of this decision.

59.

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61. Financial aspects of the relationship

62. The review applicant informed the Tribunal that they have a joint ownership of a property in Deer Park for AUD\$315,000 and that the mortgage on the property through ANZ Bank is AUD\$252,000. The monthly repayments are AUD\$1050 per month. The deposit on the property was financed from funds the visa applicant bought with her from China. The review applicant works as a dim sum maker at Dragon Boat Chinese restaurant and is paid AUD\$600 per week which is deposited into a joint bank account. The review applicant stated that the visa applicant sometimes contributes to the joint bank account but not often. This evidence was supported by the evidence from Miss Wen as to her mother transferring money from China

63. The Tribunal asked the review applicant about how he financially manages to pay the mortgage of approximately AUD\$1050 per month considering his income is only AUD\$600 per week after tax which equates to a total income after tax of \$31,200 per annum. The total amount of the mortgage at AUD\$1050 per month when multiplied by 12 months equals AUD\$12,700. If you are to deduct the applicant's total income after tax per annum of AUD\$31,200 less the \$12,700 per annum for the mortgage the review applicant is left with AUD\$18,400 for all remaining living expenses. The review applicant stated to the Tribunal that at times the visa applicant makes the mortgage payments. The Tribunal notes that on an ANZ bank statement dated February 2017 to June 2017 it showed that in March 2017 the visa applicant paid the mortgage (AAT Folio 120).
64. The visa applicant stated that her husband, the review applicant, transfers money into the Bank of China from the Melbourne branch back to China. The visa applicant was not able to provide further details about the amounts of money her husband sends back from Australia to China. However the visa applicant when questioned further by the Tribunal stated that the payments she made to her husband of approximately AUD\$900, on 19 April 2017, 16 May 2017 and 15 June 2017 were possibly payments for the joint mortgage. When the Tribunal questioned the review applicant about various bank transactions he was very vague and demonstrated a limited understanding of the party's finances. He referred to his being reliant on the daughter of the visa applicant to operate the joint account.
65. The review applicant stated to the Tribunal that the visa applicant often sends money to her daughter, Miss Wenyuan Wen, and the review applicant when required. The money sent by the visa applicant is mainly for her daughter to pay for her tuition fees. This was not consistent with the evidence given by the visa applicant that the review applicant pays for her daughter's expenses. The Tribunal notes that the visa applicant's daughter who is on a student visa lived with the review applicant in Deer Park for periods of time since her mother returned to China but she no longer lives there relevant in household not finances. The review applicant stated that the visa applicant runs a fruit business back in China. She is an on seller of fruit imported from Vietnam to China. She is a sole operator.
66. While the Tribunal accepts the parties have a joint asset in the Deer Park property and a joint liability in the mortgage of that property the Tribunal does not accept that joint ownership is of itself an indicator of their being in a genuine and continuing relationship. The Tribunal accepts from the evidence provided that the visa applicant has previously sent money to the review applicant to assist him with paying the mortgage. The Tribunal accepts this as being evidence of the parties being in a spousal relationship rather than co-owners of a joint asset.
67. The parties do not share day-to-day household expenses and each maintains their own bank accounts for day to day expenses. This is not unusual given the review applicant is in Australia and the visa applicant is in China.
68. The Tribunal places limited weight on this aspect of the relationship.

69. **Nature of the household**

70. The review applicant has three adult children from his previous marriage and the visa applicant has two children, one daughter who is currently in Australia on a student visa and a son who was born in 2001 and lives in China. While the Tribunal accepts the daughter of the visa applicant lived with the parties together at Deer Park she no longer does. The evidence as to the periods she had lived there since the visa applicant returned to China was equivocal. The evidence given by the daughter of the visa applicant at the time of hearing was not indicative of her being in the care of the review applicant while her mother was in

China. The Tribunal finds on the evidence that there is no joint responsibility for the children's care and support.

71. The review applicant told the Tribunal he and visa applicant started living together on 20 April 2015 when the review applicant moved into the visa applicant's house in Oakleigh. The Tribunal noted the Residential Tenancy Agreement dated 2 May 2015 was in the name of the review applicant. They then lived together with the visa applicant's daughter until the visa applicant returned to China in August 2016. On their evidence during the time the review applicant and visa applicant lived together they shared responsibilities for the cooking, cleaning and washing.
72. The Tribunal notes that until 20 April 2015 the review applicant had lived with his ex-wife in Sunshine. The Tribunal was mindful of the evidence they had divorced in 2009 but the review applicant said they continued to share a house because they were both on limited incomes. The review applicant told the Tribunal that he sees his ex-wife every week when he sees his grandchild.
73. Given that the review applicant and visa applicant only lived together for approximately 15 months the Tribunal places limited weight on the nature of the household.
74. **Social aspects of the relationship**
75. At the time of application the parties provided three statutory declarations attesting to the fact they were in a genuine and continuing partnership.
76. At the time of hearing the review applicant informed the Tribunal stated that they do not have many friends and their closest friends are all Chinese speaking. The review applicant further stated that they have no social life and don't socialise together. The Tribunal was puzzled by the response of the review applicant considering the visa applicant lives in a different country. The review applicant informed the Tribunal that he had stopped gambling when he met the visa applicant and that he has no hobbies.
77. The review applicant and visa applicant informed the Tribunal that they were married on 14 May 2015 at the Old Treasury Building in Melbourne and the wedding was witnessed by their landlord (Michael) of the Oakleigh residence, who the review applicant stated is a nice person and Ms Xing Siew Lai the mutual friend. The Tribunal notes that only one of the review applicant's three children attended the wedding and the visa applicant's daughter. The Tribunal was concerned that the nonattendance of the review applicant's children was not corroborative of his evidence that his children were supportive of his new relationship. The Tribunal notes that the applicant's submitted several photos of them and the above mentioned outside the Old Treasury Building where the Registry Office is located (AAT Folio 142, 143b and 154b).
78. The review applicant informed the Tribunal that he and the visa applicant communicate via telephone or the social media application WeChat using the video option every day and they talk about everything, that their life together could be anywhere and that they planned to stay together.
79. From the oral evidence provided by the review applicant it would appear that he maintains a close friendship with his ex-wife who he sees every week when he visits to see his grandchildren. The review applicant also stated the in late 2014 he travelled with his ex-wife to China and that the visa applicant's ex-husband has never met the review applicant.
80. On consideration of the evidence, the Tribunal considered the social aspects of the relationship; whether the persons represent themselves to other people as being married to

each other; the opinion of their persons' friends and acquaintances about the nature of the relationship and any basis on which the persons plan and undertake joint social activities.

81. The Tribunal accepts from the evidence given at hearing the children of the visa applicant and the review applicant now consider them to be in a spousal relationship although the evidence was equivocal as to whether they did at the time they married and made their application. Given that the review applicant and visa applicant live in separate countries and have spent little time as part of the one household the Tribunal gives little weight to the overall aspects of the social aspects of the relationship.

82. Nature of the person's commitment to each other

83. The review applicant informed the Tribunal that he first met the visa applicant in December 2014 at the home of Ms Xing Siew Lai, a mutual friend. According to the visa applicant after their first meeting the review applicant asked Ms Xing Siew Lai for the visa applicant's phone number. The review applicant and the visa applicant married on 14 May 2015 (DIBP Folio 38) five months after meeting for the first time at Ms Xing Siew Lai house. The Tribunal was mindful of the rapid inception of the relationship.
84. The visa applicant informed the Tribunal that she believes the relationship is good, that it is very deep and that the review applicant treats her really well especially as we are older and that we would like to spend the rest of our lives together. The visa applicant further stated that he calls her every day and they talked for 1 to 2 hours.
85. The visa applicant stated that they lived together from 20 April 2015 until she returned to China in August 2016. Since returning to China they have physically spent two weeks together and that she has seen him four more times since then. The visa applicant was not able to provide further detail about the time they had spent together returning to China in August 2016.
86. The last time the couple saw each other in person was in China in May 2018 for a period of 10 days when they went on a cruise together and visited the review applicant's sister for dinner. The Tribunal notes that the review applicant paid for his airline ticket and that the visa applicant paid for the rest of the trip.
87. The review applicant stated that he sees the relationship being a long lasting one.
88. On the basis of the evidence both provided to the Tribunal and the Department, the Tribunal accepts the couple lived together for a period of 15 months before the visa applicant returned to China in August 2016. The Tribunal acknowledges that the couple own a property together at Deer Park and that they do communicate on a regular basis however the Tribunal is not satisfied that the couple draw a significant degree of companionship and emotional support from each other. On the evidence, the Tribunal finds that the persons do not see the relationship as being long-term or that the couple has a mutual commitment to a shared life together to the exclusion of all others.
89. Having regard to all the circumstances of the relationship, the Tribunal is not satisfied that when the application was made and at the time of this decision, the review applicant and visa applicant demonstrated a mutual commitment to a shared life to the exclusion of all others. The Tribunal is not satisfied that their relationship is genuine and continuing. The Tribunal is not satisfied that they live together or do not live separately and apart on a permanent basis.
90. On the basis of the above the Tribunal is not satisfied that the requirements of s.5F(2) are met at the time the visa application was made and the time of this decision.

91. Therefore the visa applicant does not meet cl.309.211 and cl.309.221.
92. For the reasons above, the visa applicant does not satisfy the criteria for the grant of the visa.

DECISION

93. The Tribunal affirms the decisions not to grant the visa applicants Partner (Provisional) (Class UF) visas.

94.

M. Edgoose
Member

Moir Brophy
Member

ATTACHMENT - Extract from Migration Regulations 1994

1.15A Spouse

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).
- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day-to-day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:
 - (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long-term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).